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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/363,062	07/29/1999	DAVID CHARLES VIANO	DP-300298	7639

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EXAMINER

WINNER, TONY H

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/363,062

Applicant(s)  
Viano et al.

Examiner  
Tony Winner

Art Unit  
3611



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 1, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-14 and 16-32 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration
- 5) ☒ Claim(s) 12-14 and 16-20 is/are allowed.
- 6) ☒ Claim(s) 21-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Acknowledgment*

1. Receipt of the amendment filed 2/1/02 has been acknowledged and entered. The office found the applicants' arguments to be persuasive, therefore, claims 12-14, 16-20 are allowed. Claims 21-32 are rejected under obviousness-type double patenting.

### *Double Patenting*

2 The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 21-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6073960. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims recite similar patentable feature.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-25, and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Suyama et al. (5,575,497).

Suyama discloses a frontal air bag (figure 4a) adapted for mounting solely to a pillar of the vehicle, wherein the air bag is adapted to be inflated and extend downward and sideways in front of an occupant seated in the vehicle; and an inflator adapted to be mounted to the vehicle structure (a pillar is part of the vehicle structure) and operatively connected to the frontal air bag.

With respect to claim 23, it is inherent that some type of trim molding is used to cover the air bag and would be displaced during the deployment of the frontal air bag.

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With respect to claims 24-25 and 30-32, Suyama is disclosed above meets all of the claim limitations.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suyama in view of Rion (5,308,108).

Suyama is disclosed above but silence about the diffuser.

Rion teaches an air bag safety device with a hollow diffuser tube to help control/distribute the air pressure.

Based on the teaching of Rion, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the air bag of Suyama to include the diffuser of Boerger so as to provide the air bag device with a means to control/distribute the air pressure.

6. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suyama in view of Yamada (5,884,937).

Suyama is disclosed above but silence with the remote inflator.

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Yamada teaches an air bag device with the inflator remotely mounted to the vehicle structure so as to eliminate the restriction of inflator sizes.

Based on the teaching of Yamada, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the air bag device of Suyama to include the remote inflator feature of Yamada so as to eliminate the restriction of inflator sizes due to the lack of space in the pillar to accommodate the inflator.

With respect to claim 29, Suyama as modified by Yamada is disclosed above meets all of the claim limitations.

### ***Response to Arguments***

7. Applicants' argument filed 2/1/02 have been fully considered but they are moot in view of new ground of rejection.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Tony Winner whose telephone number is (703) 306-5957. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 3611.



**TONY WINNER**  
**PATENT EXAMINER**

April 13, 2002



**PAUL N. DICKSON**  
**SUPERVISORY PATENT EXAMINER**  
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4/22/02